

MEMORANDUM FOR: Director of Central Intelligence

FROM : Anthony A. Lapham
General Counsel

SUBJECT : Congressman Les Aspin's Comment in
29 May 1978 Issue of Time Magazine

1. Action Requested. Your consideration of the attached proposed letter (TAB A) to Les Aspin.

2. Background. The 29 May 1978 issue of Time Magazine contained the following:

Les Aspin, Congressman from Wisconsin:
'The CIA can't be the only arbiter of what is or isn't classified. There ought to be somebody you can appeal to-- an arbitrator set up by an act of Congress.'

You asked that we look over your testimony to Senator Biden's Subcommittee on Secrecy and Disclosure and prepare a polite letter to Congressman Aspin on his statement.

3. The context in which Mr. Aspin made the statement is unclear. The Agency, of course, is not "the only arbiter of what is or isn't classified." The Interagency Classification Review Committee (ICRC) established by Executive Order 11652 is authorized to consider appeals of denials of declassification requests under the Order and the NSC Directive on classification, downgrading, and declassification. This admittedly is entirely an Executive Branch process. Under the Freedom of Information Act Amendment of 1974, however, federal district courts are empowered to determine whether the Agency may withhold records from a requester, on the basis of, for example, information "in fact properly classified pursuant to... Executive Order." The court is authorized to review Agency documents in camera and to determine the matter "de novo."

4. When the 1974 amendment was passed President Ford expressed some reservations about the constitutionality of